IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 90 OF 1995

Naran @ Narayan Deoji Gharniya,
Adult, Indian Inhabitant of Bombay
residing in Room No.21,
B.D.D. Chawl No. 107,
Worli, Bombay 400 018. ...Appellant.

Versus

The State of Maharashtra ...Respondent

.....

Shri. V. Ramkrishnan, Advocate for the appellant.

Shri. A.S. Shitole, A.P.P. for Respondent.

.....

CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 28TH SEPTEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant challenges the judgment and order dated 04.02.1995 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No. 333 of 1988. By the said judgment and order, the appellant has been convicted and sentenced under Sections 498-A and 306 of I.P.C. For the offence under Section 498-A of I.P.C. he has been sentenced to suffer R.I. for three years and to pay fine of Rs.500/- i/d R.I. for four months. For the offence under Section 306 of I.P.C. he has been sentenced to

suffer R.I. for three years and to pay fine of Rs.500/- i/d R.I. for four months. The learned Sessions Judge further directed that the substantive sentence shall run concurrently.

2. Briefly stated the prosecution case is as under:-

. Deceased Neeru was the daughter of P.W.1 Gordhanbhai Walodra who is the complainant in the present case. He was resident of Bhavnagar in Gujrat. His daughter Neeru was married with the appellant in June, 1983. After the marriage Neeru started living with the appellant alongwith his family members in B.D.D. Chawl, Worli at Bombay. The appellant was working as an extra in Hindi movies. For one year the relationship between Neeru and the appellant were good. Thereafter, the appellant started ill-treating Neeru. The appellant used to get drunk and he used to harass Neeru. Neeru told her father P.W.1 Gordhanbhai about this fact when she came to his house one year after the marriage. Whenever Neeru came to Bhavnagar she complained of ill-treatment and beating at the hands of the appellant. In January 1987, Neeru came to Bhavnagar and lived there for two months. Appellant came to take her back, at that time the appellant assured Gordhanbhai that he

will not ill-treat Neeru. On this assurance Gordhanbhai sent Neeru with the appellant. Neeru was educated upto 8th Std. she sent a letter to her father in which she had written about harassment, ill-treatment and beating at the hands of the appellant. Gordhanbhai had identified the handwriting of his daughter Neeru on the letter. He had handed over the original letter to the police at the time of lodging his complaint.

. On 18.8.87 Gordhanbhai received a message from Bombay that his daughter Neeru received burn injuries and she was dead. On the next day he came to Bombay with his wife and his nephew P.W.2 Haribhai. He then filed his complaint (Exh.7) with the police. Thereafter, investigation commenced. During the course of investigation, the body of Neeru was sent for post mortem. On examination it was found that Neeru received 60% burn injuries and the cause of death is shock due to thermal burns (unnatural). After completion of investigation, charge sheet came to be filed.

3. In due course the case was committed to the Court of Sessions. Charge came to be framed against the appellant for the offence under Sections 498-A, 306 and 304-B of I.P.C. The appellant pleaded not guilty to the said charges

and claimed to be tried. The defence of the appellant is that of total denial. During the course of trial in all the prosecution has examined five witnesses. P.W.1 Gordhanbhai Walodra is the father of Neeru. P.W.2 haribhai Walodra is the cousin brother of Neeru. P.W.3 Smt. Ganga Makwana and P.W.4 Jeeva Rathod are the neighbours of the appellant and P.W.5 P.I. Mustapha Inamdar is the Investigating Officer in the present case. On going through the evidence of these witnesses, the learned Sessions Judge acquitted the appellant of the offence under Section 304-B of I.P.C. However, he convicted the appellant under Sections 498-A and 306 of I.P.C. Hence, this appeal.

4. I have heard Mr. Ramkrishnan, the learned advocate for the appellant and Mr. A.S. Shitole, the learned A.P.P. for the State. I have also gone through the entire evidence on record as well as the judgment and order passed by the learned Sessions Judge. After giving my anxious consideration to the matter, I am constrained to observe that there is no merit in the appeal and the same deserves to be dismissed.

5. The conviction of the appellant is founded on the evidence of P.W.1 Gordhanbhai and P.W.2 Haribhai and the letter (Exh.6-A) which was sent by

Neeru to her father sometime prior to her death. The fact that the appellant was the husband of Neeru is not disputed. Similarly the fact that Neeru committed suicide by burning herself is also not disputed. On behalf of the appellant it is not pleaded that it is a case of death due to accidental burns. Neeru received burns somewhere shortly after midnight, at such time normally no women is busy in cooking. The panchanama of scene of offence shows that the room was smelling of kerosene. So also the clothes of Neeru which were sent to C.A. were found to have kerosene residues. Neeru was found to have 60% burns in first and second degree all over her body. From all these circumstances, the only conclusion which can be reached is that Neeru committed suicide by pouring kerosene on herself and setting herself on fire.

5. For proving the offence under Sections 498-A and 306 of I.P.C. the prosecution has relied upon the evidence of P.W.1 Gordhanbhai who is the father of Neeru and P.W.2 Haribhai who is the cousin brother of Neeru and the letter (Exh.6-A) written by Neeru to her father.

6. P.W.2 Haribhai is the cousin of Neeru. He has stated that Neeru was married with the appellant in 1983. When Neeru met him in March, 1987, she told

him that the appellant used to beat her under the influence of liquor. Neeru also told this witness that her father did not give any dowry to the appellant and on account of this the appellant was harassing Neeru. This witness has further stated that on 18.8.1987 his uncle Gordhanbhai received a message that Neeru died due to burn injuries. This witness came to Bombay with P.W.1 Gordhnabhai and his wife. Nothing has been elicited in the cross examination of this witness so as to disbelieve his testimony. From the evidence of this witness it is clearly brought on record that the appellant used to beat Neeru under the influence of liquor and that he was harassing Neeru.

7. P.W.1 Gordhanbhai has stated that he was resident of Bhavnagar. His daughter Neeru was married to the appellant in June, 1983. After the marriage Neeru started residing with the appellant and his family members in B.D.D. Chawl, Worli, Mumbai. The appellant was working as an extra in Hindu films. After one year of the marriage, the appellant started ill-treating Neeru. He used to get drunk and used to harass and beat her as the father of Neeru was not able to give dowry to the appellant in his marriage. Neeru narrated this fact to Gordhanbhai when she came to Bhavnagar to meet him. In January 1987, Neeru came to Bhavnagar

and lived there for two months. Appellant came to take her back, at that time the appellant assured Gordhanbhai that he will not ill-treat Neeru. On this assurance Gordhanbhai sent Neeru with the appellant. Neeru was educated upto 8th Std. She sent a letter (Exh.6A) to her father in which she had written about harassment, ill-treatment and beating at the hands of the appellant. On 18.8.87 Gordhanbhai received a message from Bombay that his daughter Neeru received burn injuries and she had died. On the next day he came to Bombay with his wife and his nephew P.W.2 Haribhai. He then filed his complaint (Exh.7) with the police.

8. Shri. Ramkrishnan, the learned advocate for the appellant has pointed out that in the cross examination of this witness it has been brought out that in their community there was no custom of demanding or giving dowry. Therefore, the prosecution case that the appellant harassed and beat Neeru on account of not meeting his demand for dowry cannot be believed. On perusal of the evidence of P.W.1 Gordhanbhai and P.W.2 Haribhai as well as the letter (Exh.6-A) what has come on record is that the appellant was complaining about not giving dowry to him to his satisfaction. Nowhere in the evidence of P.W.1 Gordhanbhai or P.W.2 Haribhai or in the letter (Exh.6-A) has it

come on record the appellant had made a specific demand of dowry from Neeru or from her father through Neeru. The complaint about receiving such dowry or not receiving dowry is different from demanding dowry. Admittedly, there is no evidence on record that the appellant had demanded dowry either in the form of cash, gold, jewellery or other valuable items. Even Neeru does not refer to any specific demand nor does she say in Exh.6-A that the appellant was demanding something and the father should fulfil that demand. What is narrated by her in Exh.6-A to her father is the complaints made by the appellant to her that her father has not given anything to him in the marriage. However, it is to be noted that in her letter Neeru has specifically stated that her husband has started drinking too much, that he beats her a lot and she was afraid her husband would kill her.

9. Under Section 498-A of I.P.C. the husband can be held guilty of subjecting his wife to cruelty if his willful conduct is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical). It has come on record that the appellant used to harass Neeru as he was addicted to liquor. His drinking had reached excessive proportions and he used to beat

Neeru a lot, when he was under the influence of liquor. The crucial question is whether the appellant has abetted the commission of suicide by treating his wife Neeru with cruelty. In my view, the evidence of P.W.2 Haribhai, P.W.1 Gordhanbhai and the letter (Exh.6-A) written by Neeru is sufficient to bring home the guilt of the appellant under Sections 498-A and 306 of I.P.C. P.W.1 Gordhanbhai has stated that Neeru had sent a letter (Exh.6-A) addressed to him and his family members. The said letter is in Gujrathi. In the said letter it is written as follows:-

> "Take me away from here anyhow. Here my life is in danger. Inform father specially that I will go wherever he wishes to. Here he will kill me within one or two months. He has started drinking too much. No one is here. I am all alone. So inform my father to take me away from here anyhow. he beats me a lot. Father come to my rescue for the last time. I do not wish (want) to stay here any more. I am begging to you (i.e. by touching your feet) to save my life; Mother I beg of you to save my life. (i.e. by touching your feet) you

> (father) come within a week anyhow and also bring mother alongwith you (father)..... ...He takes so much liquor and is harassing me a lot. He is not providing me with food even. Hence within a week you file a police case and save my life from here as he will kill me. Father and Mother I am willing to do whatever you say, you take me away from here save my life. Father I am begging of you (i.e. by touching your feet) to come here and take me away anyhow that too immediately (quickly). If you not then form a mahila-mandal and take me away. Since you have not given anything, hence, he wants to kill me.... ...Father show me mercy last time and rescue me from here otherwise I will commit suicide by taking poison which will defame your name."

10. In the entire letter Exh.6A Neeru has repeatedly requested and prayed and begged of her father to come to Bombay and take her away. Every word written by her is an appeal to their sympathy, emotions and sentiments and there appears to be imminent danger to her life. The urgency of their

intervention is repeatedly brought to their notice by touching their feet through the letter. She has repeatedly stated that appellant was bent upon killing her as her father has given nothing in her marriage. The addiction of the appellant to liquor has been brought to the notice of father repeatedly. If the father had no courage, he had been advised to form a Mahila-Mandal to come to the rescue of Neeru and ultimately Neeru, though out of fright, expressed her resolve to end her life by committing suicide even though the same may defame the name of her family. The letter is self speaking and self explanatory. In most unequivocal terms Neeru has brought to the notice of her father her plight, misery and the imminent danger posed to her life by the appellant. She had repeatedly begged of them to come to Bombay and take her away to Bhavnagar. She also shown her willingness to go anywhere in the world away from her husband. She has suggested that if the father does not come, this will be a last opportunity for him to save her life. She has further suggested that the father should either go to police and lodges a complaint or form a Mahila-mandal and seek help of Mahila Mandal to come to her rescue and ultimately she has warned her father that if this time he does not show courage then she will have no alternative but to commit suicide. From this letter Exh.6A it is

amply clear that Neeru was living with the appellant under the fear of death and under threat of death from the appellant. Thus, from the evidence on record it is clear that the appellant treated his wife Neeru with cruelty.

11. Shri. Ramkrishnan, the learned advocate for the appellant has submitted that the prosecution has not proved that the said letter (Exh.6A) was written by Neeru herself. Mr. Ramkrishnan has pointed out that P.W.1 Gordhanbhai has stated he used to get the letters read through his sons or others. Thus, Mr. Ramkrishnan has submitted that as Gordhanbhai was unable to read, it was not possible for him to identify the handwriting on the letter (Exh.6A) to be that of his daughter Neeru. However, in this connection it is necessary to refer to the evidence of Gordhanbhai. P.W.1 Gordhanbhai has stated that he can read Gujrathi a little. He has categorically stated that he is able to identify the handwriting of Neeru. He has identified that letter Exh.6A is written by Neeru. Normally a father would be able to identify the hand writing of his daughter. This letter was produced by Gordhanbhai at the time of lodging his complaint. On perusal of Exh.6A, the inland letter which is written in Gujrathi the postal stamp is seen on the letter. The said postal stamp is dated

18.6.87 and it is addressed to Bhavnagar, Dodha Rukel Chapru Colony, Plot No. 1308 Shri. Ramkripa, Gordhanbhai Rupabhai, Bhavnagar i.e. P.W.1. The postal stamp and the address on the inland letter firstly supports and proves the case of P.W.1 that he has received that letter on his address at Bhavnagar. Secondly, the letter starts with the words 'From Bombay Neeru writes this letter to Gordhanbhai, my mother and others". These opening words further supports the case of the P.W.1 Gordhanbhai that it was a letter written by Neeru. The postal stamp also makes it clear that the letter is not a subsequent creation or an after thought or fabrication of document by Neeru's father to substantiate his case. In addition to this, the fact that when Neeru's father came to Bombay on 19.8.87 after receiving the information about Neeru's death, he had brought this letter with him and he handed over the same to the police clearly indicates that there was no time available to P.W.1 to indulge in fabrication of document. In such circumstances, the admission of P.W.1 that he used to get letters read through his son or someone else does not disprove the ability of this witness to identify his daughter Neeru's handwriting. I therefore, hold that the prosecution is successful in proving that Exh.6A is written by Neeru to her father in June, 1987.

12. Mr. Ramkrishnan has submitted that P.W.1 Gordhanbhai has stated that he received the letter Exh.6A in June 1987 but he did not come to Bombay to see Neeru nor did he send anybody to the appellant or his parents. In my opinion, the admission of Gordhanbhai merely indicates his inaction to a certain extent on his part but that itself is not sufficient to show that the letter Exh.6A is a false and concocted document. Moreover, it is pertinent to note that P.W.1 Gordhanbhai has stated that because he was ill he could not come to Bombay. From the evidence on record it appears that Gordhanbhai is a poor man. he used to do house work and he was getting Rs.300/- per month. A person having such a meagre income and also having six daughters and three sons to maintain is bound to be under constant financial strain and as such it can be reasonably inferred from the circumstances that his inaction in not coming to Bombay was either due to his financial condition or due to ill health. In such case the inaction by Gordhanbhai cannot be considered as unnatural.

13. Shri. Ramkrishnan has submitted that the letter was sent two months prior to the date when Neeru committed suicide and as such the letter

cannot be taken into consideration for showing that the appellant treated Neeru with cruelty. However, in the present case it is seen that death has taken place within seven years of marriage, hence, the presumption under section 113-A of the Evidence Act is liable to be invoked in respect of the appellant. What this section requires is that whenever suicide has taken place within seven years of the marriage and the victim was subjected to ill-treatment by the husband then the court may having regarding to all the circumstances presume that the suicide has been abetted by the husband. It is significant to note that the words 'soon before her death' appearing in Sec. 113B of the Evidence Act are absent in Sec. 113A of the Evidence Act and it is therefore, clear that the cruel treatment given to a woman within 7 years period can be considered and has to be considered by the Court so far as the offence under Section 306 of I.P.C. is concerned. In view of my above findings it is not necessary to consider the arguments of Mr. Ramkrishnan regarding the proximity of the harassment stated in letter Exh.6A with the fact of suicide. This proximity is required to be considered only if the court wants to invoke Sec. 113B of the Evidence Act because the words 'soon before her death' have been used with reference to the ill-treatment caused to the

victim on account of demand of dowry. Since in the present case there is no evidence of demand of dowry, the question of considering the proximity between Exh.6A and the fact of suicide does not arise.

14. One cannot loose sight of the fact that Neeru had committed suicide within seven years of her marriage, in such case presumption under Section 113A of the Evidence Act is liable to be drawn against the appellant. Presumption under Section 113A is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused abetted the suicide of the deceased. In the present case the essentials have been proved. I have already observed that it is a case of suicidal death and there is enough evidence to show that the appellant treated Neeru in a cruel manner, hence in such circumstances, the presumption is liable to be drawn against the appellant that he abetted the suicide of Neeru.

15. It was argued by Shri. Ramkrishnan that in order to prove the abetment, it was necessary for the prosecution to bring evidence regarding the happenings on the date of the incident or immediately preceeding the date of suicide and

according to him since there is no evidence either from P.W.1 Gordhanbhai or any other witness and since the neighbours have not thrown any light on this aspect, the charge of abetment to commission of suicide is liable to fall. However, in view of my observation in the earlier two paras, I do not find any merit in this submission.

16. Lastly it was submitted by Shri. Ramkrishnan that if actually Neeru was subjected to cruelty, the neighbours would have stated about this aspect. He has submitted that two persons were residing in the Chawl where Neeru resided i.e. P.W.3 Smt. Ganga Makwana and P.W.4 Jeeva Rathod, however, both of them did not state about any ill-treatment or harassment by the appellant to Neeru nor did they state about any fights or quarrels between Neeru and the appellant. In this connection it is pertinent to note that P.W.3 Ganga Makwana resided one room away from the house of the appellant i.e. the appellant resided in room No.21 and she resided in room No.23. As far as P.W.4 Jeeva Rathod is concerned, it has not come on record as to where he was residing in the Chawl. As both these witnesses were residing at a distance from the house of the appellant and Neeru, it was not possible for them to know as to what actually used to transpire in the house of the appellant. Moreover, it is well

known that the third persons are always reluctant to take sides in the matrimonial matters. It is pertinent to note that both these witnesses have not stated that there was no harassment or ill-treatment to Neeru at the hands of the appellant.

17. Considering the evidence of P.W.1 Gordhanbhai, P.W.3 Haribhai and the letter Exh.6A, I have no hesitation in holding that the appellant ill-treated Neeru because of his addiction to liquor, because of his unemployment and on account of the complaint of receiving no dowry or less dowry. Exh.6A brings on record the gravity of the situation faced by and felt by Neeru and therefore, it cannot be said that the situation between the appellant and Neeru was a normal situation between husband and wife. The resolve of Neeru as expressed in the letter Exh.6A to end her life clearly indicated that it had become unbearable for her to pull on with the appellant and tolerate the sufferings.

18. In the result the conviction and sentence of the appellant for the offence punishable under Sections 498-A and 306 of I.P.C. is confirmed and the appeal is dismissed. The appellant is on bail. On the request of Shri. Ramkrishnan, the learned

advocate for the appellant, the appellant is granted five weeks time to surrender.

19. Criminal appeal is dismissed.